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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/712,131	11/13/2003	Andreas Schabert	104035.271436	8184
7055 7590 03/26/2007 GREENBLUM & BERNSTEIN, P.L.C. 1950 ROLAND CLARKE PLACE RESTON, VA 20191			EXAMINER ELKINS, GARY E	
			ART UNIT	PAPER NUMBER
			3782	

SHORTENED STATUTORY PERIOD OF RESPONSE	NOTIFICATION DATE	DELIVERY MODE
3 MONTHS	03/26/2007	ELECTRONIC

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If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

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pto@gbpatent.com

# Office Action Summary

Application No.

10/712,131

Applicant(s)

SCHABERT ET AL.

Examiner

Gary E. Elkins

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 12 December 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 12-14, 16-18, 20-26 and 28-33 is/are pending in the application.
- 4a) Of the above claim(s) 20, 21, 32 and 33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12-14, 16-18, 22-26 and 28-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 2006 08 15
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Election/Restrictions*

1. Claims 32 and 33 added in the amendment filed 12 December 2006 do not read upon the elected embodiment of figs. 1-3 and 9. Accordingly, claims 32 and 33 have been withdrawn from consideration as being directed to the non-elected embodiment of fig. 4.

2. This application contains claims 20, 21, 32 and 33 drawn to an invention nonelected with traverse. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 12-14, 16, 17, 22, 25 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Dixon. Dixon discloses a first side panel 22, 46 including a perforated zone 46, 50 therein, a second side panel 16, lateral side panels 18, 20, an insertion tab 40 hinged to lateral side panel 18 and fixedly attached to the perforated zone and a two layer hanger 42, 44 hinged to the “top” of the first side panel 22, 46. It is noted that the term “top” and “bottom” are considered relative to the position of the box and are not considered to define over the construction of Dixon which can be positioned with either the hanger at the top or the flaps at the top. With respect to claim 17, note is made of the cover flap 46 formed as part of the perforated zone insofar as claimed.

*Claim Rejections - 35 USC § 103*

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 12, 16 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE '468 in view of DE '053. DE '468 discloses all structure of the claimed box except a two layer hanger hinged to a top of one of the side panels. DE '053 teaches that it is known to make a side opening box with a two layer hanger (32) formed as part of the end closure flaps. It would have been obvious to make one of the end closure flaps in DE '468 with a hanger as taught by DE '053 to facilitate hanging a side opening box on a hanger for display.

7. Claims 12, 13, 16, 22 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davidson in view of DE '053. Davidson discloses all structure of the claimed box except a two layer hanger hinged to a top of one of the side panels. DE '053 teaches that it is known to make a side opening box with a two layer hanger (32) formed as part of the end closure flaps. It would have been obvious to make one of the end closure flaps in Davidson with a hanger as taught by DE '053 to facilitate hanging a side opening box on a hanger for display.

8. Claims 17, 18, 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claims 16 and 22 in paragraph 6 or 7 above, and further in view of Schulz '819. With respect to claim 17 and 23, each of modified Davidson and DE '468 evidences all structure of the claimed box except hinging of the first hanging tab to the side panel via a closure flap. Schulz '819 teaches that it is known to connect a pair of hanging tabs to a

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sidewall via a closure flap (311) to facilitate disposition of the hanger centrally of the end closure. It would have been obvious to connect the hanging tabs in modified Davidson or DE '468 to the side panel via a closure flap as taught by Schulz '819 to provide more even weight distribution when hanging box. With respect to claim 18 and 24, each of modified Davidson and DE '468 further does not evidence formation of the cover flap with a width of 55-60 percent of the width of the top closing flap. It would have been obvious as a mere arbitrary change in the size of the cover flap to form the cover flap with a width 55-60 percent of the width of the top closing flap in either modified Davidson or DE '468. No functional distinction is seen nor has any functional distinction been asserted by Applicant with respect to the claimed dimension as compared dimension suggested by the prior art of record. Mere arbitrary changed in size/shape of an element have been held to be obvious for one of ordinary skill in the art. See In re Dailey, 149 USPQ 47 (CCPA 1976), Graham v. John Deere Co., 148 USPQ 459 and Gardner v. TEC Systems, Inc., 220 USPQ 777 (Fed. Cir. 1984), cert. denied, 225 USPQ 232 (1984).

9. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dixon. Dixon discloses all structure of the claimed box except formation of the cover flap with a width 55-60 percent of the width of the top closing flap (26 or 30). It would have been obvious as a mere arbitrary change in the size of the cover flap to form the cover flap with a width 55-60 percent of the width of the top closing flap in Dixon. No functional distinction is seen nor has any functional distinction been asserted by Applicant with respect to the claimed dimension as compared dimension suggested by the prior art of record. Mere arbitrary changed in size/shape of an element have been held to be obvious for one of ordinary skill in the art. See In re Dailey,

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149 USPQ 47 (CCPA 1976), Graham v. John Deere Co., 148 USPQ 459 and Gardner v. TEC Systems, Inc., 220 USPQ 777 (Fed. Cir. 1984), cert. denied, 225 USPQ 232 (1984).

10. Claims 28-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claims 17 and 23 in either paragraph 6 or 7 above, and further in view of Schulz '819. Each of modified Davidson and DE '468 evidence all structure of the claimed blank except attachment of the hanger to the second side panel. Schulz '819 further teaches that it is known to secure a hanger to the second side panel. It would have been obvious to reverse the position of the hanger in modified Davidson or DE '468 as taught by Schulz '819 as a mere reversal of parts. No distinction is seen between securing the hanger to the first side panel and the second side panel. The difference is considered arbitrary and suggested by the prior art.

With respect to claim 30, it would have been obvious as a mere arbitrary change in the size of the cover flap to form the cover flap with a width 55-60 percent of the width of the top closing flap in modified Davidson or DE '468. No functional distinction is seen nor has any functional distinction been asserted by Applicant with respect to the claimed dimension as compared dimension suggested by the prior art of record. Mere arbitrary changed in size/shape of an element have been held to be obvious for one of ordinary skill in the art. See In re Dailey, 149 USPQ 47 (CCPA 1976), Graham v. John Deere Co., 148 USPQ 459 and Gardner v. TEC Systems, Inc., 220 USPQ 777 (Fed. Cir. 1984), cert. denied, 225 USPQ 232 (1984).

#### ***Response to Arguments***

11. Applicant's arguments filed 12 December 2006 have been fully considered but they are not persuasive.

The remarks assert that it would not have been obvious to modify the prior art in view of DE '053 since nothing suggests the desirability of the combination and the dimensions of the prior art references being modified are not adapted for hanging (the boxes are not flattened as in DE '053). In response, the desirability of having a hanger on a side opening box is apparent from a consideration of the advantages of having a hanger on such a box, i.e. one can hang the box for display or storage while maintaining the side opening feature of the box. This suggestion is considered applicable irregardless of whether the box is flattened or not. It is not seen that the shape of the box would have led one away from the suggestion readily apparent in the DE '053 disclosure.

The remarks are otherwise moot in view of the new grounds of rejection.

### ***Conclusion***

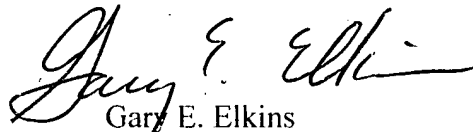
12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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A handwritten signature in black ink, appearing to read "Gary E. Elkins". The signature is fluid and cursive, with the first name "Gary" being the most prominent.

Gary E. Elkins  
Primary Examiner  
Art Unit 3782

gee

19 March 2007